



Appeal of Oxford Liquor, Inc.

The issue presented by this appeal is whether a California corporation which commences doing business during the taxable year following its year of incorporation is required to file a return and pay franchise tax for the year of incorporation.

Appellant's articles of incorporation were filed with the Secretary of State on May 23, 1975. With the filing of its articles, appellant was required to **prepay** a minimum franchise tax of \$200. (Rev. & Tax. Code, § 23221.) Appellant adopted a fiscal year of July 1 through June 30 and commenced doing business on July 1, 1975.

On July 26, 1976, appellant filed a franchise tax return for the taxable year ended June 30, 1977. Shortly thereafter, respondent discovered that appellant had failed to file a return for the period from May 23, 1975 to July 1, 1975. Respondent also determined that appellant had failed to pay minimum franchise tax of \$200 for the taxable year ended June 30, 1976. Consequently, respondent issued a demand for the delinquent return and for payment of the minimum franchise tax. Respondent also imposed a penalty for failure to file a timely return.

After filing a return and paying the tax and penalty for the years in question, appellant filed a claim for refund of the tax and penalty. In essence, it is appellant's position that it should not be required to file a return and pay tax for the period from May 25, 1975 to July 1, 1975, since it did not conduct business or earn income during such period. We disagree.

Section 23153 of the Revenue and Taxation Code provides, in pertinent part:

(a) Every corporation not otherwise taxed under this **chapter...** shall pay annually to the state a tax of **[two hundred dollars (\$200)]**.

* * *

Every such domestic corporation taxable under this section shall **be subject** to said tax from the date of incorporation until the effective date of dissolution

A California corporation which refrains from doing any business during a particular income year is **"not otherwise taxed under this chapter"** within the meaning of **section 23153**; whether or not such income year constitutes a full twelve

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months, the corporation is subject to the \$200 minimum franchise tax imposed by section 23153. (See Appeal of Vitmora Company, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Mission Valley East, Cal. St. Bd. of Equal., Oct. 7, 1974.) The record on appeal indicates that appellant incorporated on May 23, 1975, that it did not commence doing business until July 1, 1975, and that it adopted a fiscal year of July 1 through June 30. Accordingly, for the period from May 23, 1975 to July 1, 1975, appellant **was** subject **to** the \$200 minimum franchise tax imposed by section 23153.

Section 23151.1 of the Revenue and Taxation Code provides, in pertinent part:

(a) With respect to corporations which commence doing business within the state after December 31, 1971, the tax for the taxable year of commencement . . . shall be the minimum franchise tax prescribed in Section 23153. (Emphasis added.)

Appellant commenced doing business on July 1, 1975, the first day of its taxable year ended June 30, 1976. Accordingly, pursuant to section 23151.1, appellant was subject to the \$200 minimum franchise tax prescribed in section 23153 for its taxable year of commencement.

Section 25401 of the Revenue and Taxation Code provides, in pertinent part:

[E]very taxpayer subject to the tax imposed by this part shall, within 2 months and 15 days after the close of its income year, transmit to the Franchise Tax Board a return ... specifying for the income year, all such facts as it may by rule, or otherwise, require in order to carry out the provisions of this part.

For purposes of section 25401, the term "income year" means, "in the case of a return made for a fractional part of a year, the period for which such return is made." (Rev. & Tax. Code, § 23042.) Appellant's election to adopt a fiscal year of July 1 through June 30 effectively closed and defined the taxable period from May 23, 1975 to July 1, 1975. Accordingly, pursuant to section 25401, appellant was required to file a return within two months and fifteen days after the close of its income year ended June 30, 1975.

Section 25931 of the Revenue and Taxation Code provides for the imposition of a penalty for failure to file a timely return "unless it is shown that the failure is due to

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reasonable cause." Moreover, ignorance of the law does not constitute reasonable cause for failure to file a timely, return. (Appeal of Escondido Chamber of Commerce, Cal. St. Bd. of Equal., Sept. 17, 1973.) Since appellant's only explanation for its failure to file a timely return for the income year ended June 30, 1975 is the erroneous belief that no **return is** required for a taxable period during which a corporation refrains from doing business, we conclude that the failure was not due-to reasonable cause.

In summary, it **is** our opinion that respondent's actions in this matter reflect proper application of the pertinent provisions of the Revenue and Taxation Code. Accordingly, we conclude that such actions must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim 'of Oxford Liquor, Inc., for refund of franchise tax and penalty in the total amount of \$281.40 for the income year ended June 30, 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of March , 1979, by the State Board of Equalization.

William B. Burnett Chairman
John D. [unclear] , Member
John D. [unclear] , Member
_____, Member
_____, Member